HUSBAND AND WIFE — RIGHTS AND LIABILITIES OF HUSBAND AS TO THIRD PARTIES — EFFECT OF MARRIED WOMEN'S PROPERTY ACTS ON HUSBAND'S ACTION FOR LOSS OF CONSORTIUM. — In an action by the plaintiff to recover for injuries resulting from an accident, caused by the defendant's negligence, in which both the plaintiff and his wife were injured, he sought to recover damages for the loss of his wife's companionship and services. His wife had recovered full damages for all her injuries in a previous action. *Held*, that, in view of modern legislation regulating the status of married women, the plaintiff cannot recover. *Marri* v. *Stamford Street R. Co.*, 78 Atl. 582 (Conn.).

A recent Massachusetts case reaches the same result. *Bolger* v. *Boston Elevated Ry. Co.*, 205 Mass. 420. The weight of authority, however, under similar statutes, is that the husband may recover, as at common law, for loss of his wife's domestic services. *Thuringer* v. *New York Central & Hudson River R. Co.*, 71 Hun (N. Y.) 526; *Booth* v. *Manchester Street Ry.*, 73 N. H. 529. See 9 HARV. L. REV. 473. But the wife alone can recover for loss of earnings in an independent business. *Riley* v. *Lidke*, 49 Neb. 139. Where the wife assists the husband in his business, her incapacity is usually regarded as his loss. *Standen* v. *Pennsylvania R. Co.*, 214 Pa. St. 189. But it is otherwise where she is regularly paid by him for such services. *Kirkpatrick* v. *Metropolitan Street Ry. Co.*, 129 Mo. App. 524. On principle, the view of the principal case seems in many ways preferable. The wife has no action for loss of her husband's services. *Goldman* v. *Cohen*, 30 N. Y. Misc. 336; *Glenn* v. *Western Union Telegraph Co.*, 1 Ga. App. 821. Moreover, the retention of the husband's action may lead to double recovery for the wife's loss of time from household work. *Perrigo* v. *City of St. Louis*, 185 Mo. 274; *Colorado Springs & Interurban Ry. Co.* v. *Nichols*, 41 Colo. 272. The soundness of the result of the principal case depends upon how far modern statutes have destroyed the fiction of the unity of husband and wife, and it seems not a strained construction that they make them independent at least as against third parties. *Cf. Thompson* v. *Thompson*, 218 U. S. 611; 24 HARV. L. REV. 403.

INJUNCTIONS — ACTS RESTRAINED — BALANCE OF CONVENIENCE DOCTRINE. — The defendant company erected a temporary roundhouse and railroad yards a short distance from the plaintiff's property, the use of which was impaired by the noise, smoke, and cinders resulting therefrom. The court found that the defendant was not negligent and that the improvements contemplated were being pushed to completion with all reasonable speed. The plaintiff sought an injunction and damages. *Held*, that the injunction should not issue. *Herrlich* v. *N. Y. C. & H. R. R. Co.*, 126 N. Y. Supp. 311 (Sup. Ct.).

For a discussion of the principles involved, see 22 HARV. L. REV. 61.

INNKEEPERS — INNKEEPER'S LIEN — WHETHER LIEN ATTACHES TO PROPERTY DEPOSITED FOR A PARTICULAR PURPOSE. — A deposited with the defendant, an innkeeper, as security for a loan, certain tickets which he, as guest, had brought to the inn. The tickets had been stolen from the plaintiff, who brought an action for conversion. *Held*, that he may recover. *Matsuda* v. *Waldorf Hotel Co.*, 27 T. L. R. 153 (Eng., K. B. D., Dec. 14, 1910).

The innkeeper has a lien on any goods brought by a guest for the whole amount due. *Mulliner* v. *Florence*, 3 Q. B. D. 484. And this may be asserted against the true owner if the goods have been stolen. *Robins & Co.* v. *Gray*, [1895] 2 Q. B. 501. Probably also it may be used to enforce repayment of money lent, though lending is not a part of the innkeeper's undertaking. See *Proctor* v. *Nicholson*, 7 C. & P. 67; *Watson* v. *Cross*, 2 Duv. (Ky.) 147. However, it seems that the lien should not attach to property deposited as security for a particular debt. It is a general rule that security deposited for one indebted-

ness may not be held for another. *Duncan* v. *Brennan*, 83 N. Y. 487. Moreover, where bankers have a lien which, like the innkeeper's, enables them to hold any securities for the whole amount due, property deposited for a specific purpose may not be so held. *Neponset Bank* v. *Leland*, 5 Met. (Mass.) 259. On these analogies it seems that the tickets deposited to secure the loan in the principal case could not be used to enforce payment of the other claims, and so the lien does not attach to them. The innkeeper is a mere pledgee from a thief and can assert no rights against the true owner.

INSANE PERSONS — GUARDIANSHIP AND PROTECTION — FALSE IMPRISONMENT. — The plaintiff, the committee of an incompetent person, had allowed the incompetent to live with the defendant for some years. Later he hired him out to A. The defendant took the incompetent from A against the will of the committee and detained him. The plaintiff, in his capacity as committee, sued the defendant for false imprisonment. *Held*, that the plaintiff can recover. *Baker, Committee of Sutliff*, v. *Washburn*, 200 N. Y. 280.

There appears to be no precedent for this action; there are, however, analogous decisions which justify the result. The relation of committee and lunatic is similar to that of guardian and ward, and governed by the same laws. *Holyoke* v. *Haskins*, 5 Pick. (Mass.) 20. An infant ward is always under restraint; but to give ground for an action for false imprisonment the restraint must be unlawful. POLLOCK, TORTS, 8 ed., 221. The test is not the will of the child but the character of the restraint. The restraint of a child against its will by its guardian or one to whom it is properly entrusted is lawful. *Townsend* v. *Kendall*, 4 Minn. 412. But restraint by one against the will of the guardian, even though the child does not object, is unlawful. *Robalina* v. *Armstrong*, 15 Barb. (N. Y.) 247; *Commonwealth* v. *Nickerson*, 5 Allen (Mass.) 518. The principal case is precisely analogous to these cases. If the committee should sue in his own right, he could only recover nominal damages for the interference with his right of custody, for he is not entitled to the earnings of his ward. *Heilman* v. *Martin*, 2 Ark. 158. The form of action in the principal case is therefore best suited to the recovery of full damages.

INSURANCE — CONSTRUCTION AND OPERATION OF CONDITIONS — IMPOSSIBILITY AS EXCUSE FOR FAILURE TO GIVE NOTICE. — The plaintiff held a policy insuring him against sickness, which provided that the insured or his representative must mail notice of sickness within ten days after the commencement of such sickness as a condition precedent to recovery. The plaintiff did not mail notice till a month after the commencement of his illness, but during that time he was delirious. *Held*, that the plaintiff can recover nothing. *Whiteside* v. *North American Accident Ins. Co.*, 93 N. E. 948 (N. Y.).

On the question whether the deranged mental condition of the insured is an excuse for failure to perform the condition of giving notice, three views have been taken. One of the earliest cases holds that the condition must be performed at all events. *Gamble* v. *Accident Ass. Co.*, Ir. R. 4 C. L. 204. The middle view is that the plaintiff can recover, but only for the period beginning ten days before the notice was sent. *Guy* v. *U. S. Casualty Co.*, 151 N. C. 465. But the decided weight of authority, augmented by many recent cases, holds that the plaintiff's disability is a complete excuse, and considers the condition performed if notice is sent within the time stipulated after the removal of the obstacle. *Comstock* v. *Fraternal Accident Ass'n*, 116 Wis. 382; *Hayes* v. *Continental Casualty Co.*, 98 Mo. App. 410. A previous New York case is a leading authority for this doctrine. *Trippe* v. *Provident Fund Society*, 140 N. Y. 23. Courts of law often give relief on equitable principles against the performance of express conditions. Familiar examples are impossibility of performance, and where the defendant himself has prevented the perform-